

**FEB 16 2005**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

KENNETH LEWIS BAINES,

Plaintiff-Appellant,

v.

V.A. GREATER LOS ANGELES HEALTH  
CARE SYSTEM,

Defendant-Appellee.

No. 03-57011

D.C. No. CV-03-02012-AHS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Alicemarie H. Stotler, District Judge, Presiding

Submitted February 7, 2005\*\*

Before: FERNANDEZ, GRABER, and GOULD, Circuit Judges.

Kenneth Lewis Baines appeals pro se the district court's judgment  
dismissing his action without prejudice for failure to state a claim. We have

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\* This disposition is not appropriate for publication and may not be cited to  
or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral  
argument. See Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291. We review de novo, *see Omar v. Sea-Land Serv., Inc.* 813 F.2d 986, 991 (9th Cir. 1987), and we affirm.

The district court properly dismissed Baines’s action without prejudice because his allegations regarding the court’s dismissal of a previous action do not state a claim upon which relief can be granted. *See id.* (sua sponte dismissal under Fed. R. Civ. P. 12(b)(6) is proper “where the claimant cannot possibly win relief”).

Baines appears to misunderstand that he has initiated two separate actions with the district court. First, he filed *Baines v. V.A. Greater Los Angeles Health*, No. 02-CV-4268 (C.D. Cal.), which the district court dismissed for insufficiency of service of process. Second, he filed the current action, No. 03-CV-2012, which the district court dismissed for failure to state a claim. We lack jurisdiction to review Baines’s contentions regarding the dismissal of the first action, No. 02-CV-4268, because Baines did not file a timely notice of appeal from the judgment dismissing that action. *See* Fed. R. App. P. 4(a).

**AFFIRMED.**